



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

BLUE RIDGE REGIONAL OFFICE

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Regional Director

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

ENFORCEMENT ACTION - ORDER BY CONSENT

ISSUED TO

Morgan Lumber Company, Inc.

FOR

Morgan Lumber Company

**Virginia Pollutant Discharge Elimination System Permit No. VAR10
Unpermitted Site**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the Virginia Department of Environmental Quality and Morgan Lumber Company, Inc. regarding the Morgan Lumber Company for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.*, § 62.1-44.15:24 *et seq.*, the Virginia Stormwater Management Program (VSMP) Regulation at 9 VAC 25-870-10., and the General VPDES Permit for Discharges of Stormwater from Construction Activities at 9 VAC 25-880-1.

SECTION C: Findings of Fact and Conclusions of Law

1. Morgan Lumber Company, Inc. (Morgan Lumber) is a business entity authorized to do business in Virginia and references to Morgan Lumber include its affiliates, partners, and subsidiaries. Morgan Lumber is a "person" within the meaning of Va. Code § 62.1-44.3.

2. Morgan Lumber owns and operates the Morgan Lumber site located in Red Oak in Charlotte County, Virginia (Site) from which stormwater associated with construction activity is discharged.
3. DEQ is the Virginia Stormwater Management Program (VSMP) authority for the Site.
4. The Site discharges stormwater associated with construction activities to an unnamed tributary of Buffalo Creek.
5. The unnamed tributary of Buffalo Creek is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
6. On March 29, 2021, DEQ staff inspected the Site and observed that land-disturbing activities greater than one acre have occurred at the Site in an area subject to stormwater runoff. The land disturbance was estimated to be thirty (30) acres to grade a future building pad located on tax parcel number 89-2-3 and a portion of parcel number 89-2-5. Morgan Lumber has not registered for coverage under the 2019 General VPDES Permit for Discharges of Stormwater from Construction Activities, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site. Morgan Lumber has not submitted a permit application to the VSMP authority and has not obtained VSMP authority approval to begin land disturbance. Morgan Lumber had not submitted a stormwater management plan to DEQ, the VSMP authority, for review and approval.

Va. Code § 62.1-44.5(A) states in part: "Except in compliance with a certificate or permit issued by the [Department] or other entity authorized ... to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to...[d]ischarge stormwater into state waters from...land disturbing activities."

9 VAC 25-870-310(A) states: "Except in compliance with a state permit issued by the [Department] pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from...land-disturbing activities."

Va. Code § 62.1-44.15:34 states: "A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance."

9 VAC 25-870-54(C) states: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities."

Va. Code §§ 62.1-44.15:24 and -44.15:34 define "land-disturbing activity" and describe regulated land-disturbing activities (including exemptions), respectively."

7. During the March 29, 2021 inspection, it was noted that an approved erosion and sediment control plan was not at the Site. The VESCP authority, Charlotte County, informed DEQ at the time of the inspection that it had not approved an erosion and sediment control plan for the Site.

Va. Code § 62.1-44.15.55 states “Except as provided in § 62.1-44.15.56 for state agency and federal agency land-disturbing activities, no person shall engage in any land disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved.”

9 VAC 25-870-54(B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

8. During the inspection on March 29, 2021, sediment trapping measures were not installed prior to engaging in land disturbance, cleared areas of the site had not been temporarily stabilized, and cut and fill slopes were exhibiting rill and gully erosion. Additionally, stormwater conveyance channels collecting stormwater runoff during precipitation events had been constructed and had not been stabilized and were displaying evidence of erosion.

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

9 VAC 25-840-40(4) states in part: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land disturbing activity and shall be made functional before upslope land disturbance takes place.

9 VAC 25-840-40(7) states in part: “Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion...”

9 VAC 25-840-40(10) states: “All storm sewer inlets that are made operational during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9. The Department has not issued coverage under any permit or certificate to Morgan Lumber.
10. On April 9, 2021, DEQ's Blue Ridge Regional Office issued a Notice of Violation No. 21-04-BRRO-001 for the violations noted above.
11. On April 12, 2021, Morgan Lumber responded to the Notice of Violation by email and stated it had hired an engineer to begin development of the erosion and sediment control and stormwater management plans.
12. On July 6, 2021, DEQ and Morgan Lumber held a conference call to discuss how to proceed with the corrective actions.
13. Based on the results of the March 29, 2021 inspection, the Department concludes that Morgan Lumber violated Va. Code § 62.1-44.5(A), Va. Code § 62.1-44.15:34, Va. Code § 62.1-44.15.55, 9 VAC 25-840-40(1), 9 VAC 25-840-40(4), 9 VAC 25-840-40(7), 9 VAC 25-840-40(10), 9 VAC 25-870-310(A), 9 VAC 25-870-54(B), and 9 VAC 25-870-54(C) as described above.
14. In order for Morgan Lumber to complete its return to compliance, DEQ staff and Morgan Lumber have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Department orders Morgan Lumber and Morgan Lumber agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$13,650 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Morgan Lumber shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the

Department has to refer collection of moneys due under this Order to the Department of Law, Morgan Lumber shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Morgan Lumber for good cause shown by Morgan Lumber, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 21-04-BRRO-001 dated April 9, 2021. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Morgan Lumber admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Morgan Lumber consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Morgan Lumber declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Morgan Lumber to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Morgan Lumber shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Morgan Lumber shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Morgan Lumber shall notify the DEQ Regional Director verbally within 24 hours

and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Morgan Lumber. Nevertheless, Morgan Lumber agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Morgan Lumber has completed all of the requirements of the Order;
 - b. Morgan Lumber petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Morgan Lumber.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Morgan Lumber from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Morgan Lumber and approved by the Department pursuant to this Order are incorporated into this

Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Morgan Lumber certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Morgan Lumber to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Morgan Lumber.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Morgan Lumber voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2023.

Robert J. Weld, Regional Director
Department of Environmental Quality

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Morgan Lumber Company, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/16/23 By: [Signature], President
(Person) (Title)
Morgan Lumber Company, Inc.

Commonwealth of Virginia
City/County of Charlotte

The foregoing document was signed and acknowledged before me this 16th day of
March, 2023, by John W. Morgan who is
President of Morgan Lumber Company, Inc. on behalf of the
corporation.

[Signature]
Notary Public

7095836
Registration No.

My commission expires: December 31, 2026

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Morgan Lumber shall:

- a. Immediately upon execution of this Order, cease all land-disturbing activities until 2019 Permit coverage has been obtained. However, this requirement shall not apply to land-disturbing activities necessary for corrective measures required or allowed by this Order or the Virginia Erosion and Sediment Control Law and Regulations.
- b. By August 1, 2023, stabilize denuded areas in accordance with 9VAC25-840-40(1) and ensure erosion and sediment controls are installed and in compliance with 9 VAC 25-840-40(4), (7), and (10).
- c. By August 1, 2023, submit a complete registration statement for coverage under the 2019 General VPDES Permit for Discharges of Stormwater from Construction Activities to DEQ.
- d. By August 1, 2023, submit a stormwater management plan to DEQ. Morgan Lumber shall respond to any comments on the stormwater management plan within 21 days of receipt of comments.
- e. By August 1, 2023, submit an erosion and sediment control plan to Charlotte County. Morgan Lumber shall notify DEQ within 7 days of erosion and sediment control plan approval by Charlotte County.
- f. By October 1, 2023, perform all actions within its control to obtain coverage under the permit.

DEQ Contact

Unless otherwise specified in this Order, Morgan Lumber Company, Inc. shall submit all requirements of Appendix A of this Order to:

Tim Fletcher
Enforcement Specialist
DEQ Blue Ridge Regional Office
901 Russell Dr., Salem, VA 24153
(540) 524-0665
timothy.fletcher@deq.virginia.gov